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ABSTRACT

"Pushouts" are victims of discriminatory discipline procedures in public schools. Pushouts first came into view with the publication of a book by the Robert F. Kennedy Memorial and the Southern Regional Council. The book is called "The Student Pushout: Victim of Continued Resistance to Desegregation." The Office for Civil Rights in the Department of Health, Education and Welfare has been collecting statistical information regarding subjective determinations based on race that enter into disciplinary actions that result in students being pushed out of schools. The figures indicate that the percentage of minorities subject to disciplinary action, suspensions, or expulsions exceed their percentages in school systems. Not every suspended student is being pushed out, of course. The disproportionate suspension statistics may actually reflect behavior. In one school district the school superintendent testified in open court that institutional racism was the reason for the disproportion. Black and other minority kids are being pushed cut of schools across the country as the statistics from Dallas, Pittsburgh, Indianapolis, Boston, and Dade County, Florida, indicate. To the Office of Civil Rights and the Justice Department a disproportionate number of suspensions of minority students are "red flags," signals that something may be wrong. Whether those two federal agencies responded properly to the "red flags" is open to serious question. (Author/JM)

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"PUSHOUTS: NEW OUTCASTS FROM PUBLIC SCHOOL"

A transcript of "Options on Education"
September 9, 1974

THE
GEORGE
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Key:
- S: Student
- M: Moderator

(In order of appearance)

- PH: Peter Holmes, Director, Office for Civil Rights, Department of Health, Education and Welfare
- JJ: John Jordan, Attorney, Dallas, Texas
- NE: Nolan Estes, Superintendent of Schools, Dallas, Texas
- NJ: Mrs. Nancy Judy, Dallas School Board
- F Dr. Emmett Conrad, Dallas School Board
- HM: M. Hayes Mizell, Director, South Carolina Community Relations Program, American Friends Service Committee
- LH: Leon Hall, Southern Regional Council, Atlanta, Georgia
- BL: Brian Landsberg, former chief prosecutor for education cases, Civil Rights Division, U.S. Department of Justice
- LC: Lennie Conway, Robert F. Kennedy Memorial

M: From National Public Radio in Washington this is "Options on Education."

S: My high school was desegregated in 1971. Some of the black students were branded as Black Militants and troublemakers by the White Administration. There was even what was known as the Black List on which many of these students names appeared. These students in many cases were bullied by the White Administration. These were students fighting for their rights. Many blacks were suspended or expelled for such things as chewing gum in class, waving to someone outside the classroom, being suspected of fighting, being suspected of burning a poster and supposed insubordination. After being bullied and suspended or expelled so many times some of these students left school, never to return.

M: Many of these students now show up in the statistics as drop outs, expulsions or suspensions. Several years from now the non-graduates may show up on welfare roles, in unemployment offices, or in jail. But it may be that a new classification--not drop outs, not expulsions not extended suspensions--is required to adequately describe these students. Such students are often referred as "pushouts," victims of discriminatory discipline procedures in public schools. Pushouts first came into view with the publication of a book by the Robert F. Kennedy Memorial and the Southern Regional Council. The book is called The Student Pushout: Victim of Continued Resistance to Desegregation. On this program we will try to find out whether a pushout problem exists, how severe it might be, and what is being done about it. I asked Peter Holmes, Director of the Office for Civil Rights in the Department of Health, Education and Welfare just how severe the pushout problem is.

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PH: John, to be quite frank we don't know how severe the pushout problem is on a national scale. We have in the last several years at the Office for Civil Rights in the Department of Health, Education and Welfare been collecting statistical information regarding subjective determinations based upon race that enter into disciplinary actions that result in the pushing out of students from schools. The figures indicate that the percentage of minorities subject to disciplinary action, suspensions or expulsions, exceed their percentages in school systems. Now that's statistical information, raising a red flag.

M: Let's look at some of the red flags Holmes mentioned. These statistics come from Holmes' own Office for Civil Rights. They are school enrollment figures from the previous year.

City	black enrollment	black suspension
Mobile	46%	64%
Indianapolis	41.4%	60.3%
Pittsburgh	42.4%	60%
Prince Georges County, Md.	28%	43%
Boston	34.1%	47%
Dade County, Florida	26%	53%

Not every suspended student is being pushed out, of course. These numbers are not to be considered a one to one documentation of the pushout phenomenon. You will hear Leon Hall of the Southern Regional Council argue that suspension is being used as a weapon to resist school desegregation. Brian Landsberg of the Justice Department raises the possibility that the disproportionate suspension statistics may actually reflect behavior. In one school district the school superintendent testified in open court that institutional racism was the reason for the disproportion. That school district in Dallas, Texas. The Superintendent Dr. Nolan Estes.. Dallas has 150,000 students, 49.4% of whom are black. 68.5% of those suspended are black. In the previous year 39% of the students were black and 60.5% of those suspended were black. That disproportion led to a lawsuit in 1972 which I discussed with John Jordan, one of the two attorneys for the plaintiff, a black student who had been suspended.

JJ: Well, the specific incident that led to a filing of the suit was a fight that occured between a black student and a white student at a recently desegregated junior high school. The fight, at least in our version of it, was started by the white student, yet both students were suspended. We felt that the immediate incident raised first a question of procedural fairness and secondly raised a question of whether or not this was part of a pattern, which we felt at that time was emerging in the recently desegregated Dallas system in that the black student was receiving harsher discipline and more frequent discipline than the white student. At that time we had no real statistics. We only had the numerous client complaints that were coming in.

M: Then the suit was a class action lawsuit?

JJ: Yes, we filed a class action lawsuit on behalf of a class of black students who were defined as those black students attending recently desegregated schools. We found that while at all levels for the 1972-73 school year the Dallas school system was 38% black or roughly 39% black, black students accounted for 60% of the suspensions.

M: What did the judge rule on the case, Mr. Jordan?

JJ: The judge found that the statistics evidence racial discrimination, that this disproportionate figure definitely was the result of institutional racism, and that the school system was going to have to take affirmative action to remedy this problem.

M: Is that an unprecedented decision?

JJ: Yes, this is essentially a problem which was begun to be detected in the last 4 or 5 years. It was only this spring that an initial study was released in the student pushout book, which was released through the Robert F. Kennedy Memorial. It essentially found that in school systems that are under desegregation orders or have recently attempted desegregation there seems to be a dramatic rise in the suspension of black students. This problem has been raised in litigation to my knowledge only once that had gone to any kind of court hearing, prior to our case. In that particular case the court chose not to deal with the issue, so this was the first time to my knowledge that the court has dealt squarely with the issue of whether or not this rise in black suspensions constitutes racial discrimination.

Now, I am not certain that a lot of people understand what they are saying when they say this, so let me sit back and explain it. Our expert witnesses testified that when you see this rise in black suspensions in a desegregated situation, that you are seeing one of two things. Either you are seeing perception and bias against black students which is clearly race discrimination, or you are seeing a rise in suspendable conduct on behalf of black students which is a reaction of a black student to a hostile environment. Either way it is the affirmative duty of the school system to solve this problem, because this kid is having trouble enough dealing with the system, so he's really not in a position to adjust, so the system has got to.

M: What do you anticipate Dallas will do to end its problem of institutional racism or of pushouts, whatever you want to define the problem as?

JJ: Well, one of our expert witnesses laid out the principles and the court officially ordered them to look at what he said and to attempt to tailor a program based on his principles for the Dallas school system. First, he said that Dallas needs institutional and structural changes. Secondly, they need training of teachers and counselors. Thirdly, they must train students to deal with the racist system and fourth, they must alter or attempt to alter the community environmental pressures there on the system. Now to go back to these things, institutional and structural changes of course mean not only to review

all your rules and procedures and methods of handling things to be certain they are not biased against whatever group you are attempting to solve a problem with, but also to add positive checks in terms of making a positive evaluation of a principal's ability to deal with members of another race. In other words, not only is he a good principal in terms of whether he keeps his school operating correctly, but to look at specifically how he is handling the race problem at his school. How is he dealing with suspendable conduct on behalf of black students? Make this a portion of the facts considered in promotion and in salary raises and in other things. In other words, be an affirmative part of the job. Now training is an area which is extremely important, in that there must be an effort to reach teachers, to make teachers understand that they have racist attitudes, which is something Dr. Estes said on the stand. He said "I, because of my background and training am a white racist." In other words, these attitudes are prevalent in all of us simply because we were raised that way. We were raised in a system. And the Dallas school system up until--hopefully their affirmative action problem will deal with this now--in the past dealt with these attitudes voluntarily, and there haven't been very many teachers that have come forward and have said "I'm a racist" because that is hard to say, and secondly it immediately makes you suspect in the eyes of all these other people if you come forward and say "I'm a racist." So there was no rush to deal with these attitudes. Now the third step is of course that you can't solve these problems overnight so you must also deal with your black students and tell them what to expect in the system and how to deal with it, so that instead of engaging in suspendable conduct when faced with institutional racism he learns to deal within the system; he learns how to make himself effective, though of course you have to give him methods to become effective in dealing with it. And then lastly you've got to get any institution which is attempting to solve its own internal problems to deal with the pressures on it from its community and environment.

M: In the middle of the situation is Dallas superintendent Nolan Estes. I asked Dr. Estes if a disproportionate number of black students were being suspended from Dallas schools.

NE: Yes, there's ample evidence to indicate that it is disproportionate.

M: Why is that happening in Dallas?

NE: Well there are a number of reasons and we've listed these for the court. Socio-economic background, achievement motivation, health, educational level of parents, a number of different reasons including institutional racism.

M: What do you mean by institutional racism?

NE: We mean any policy, procedure or practice which subordinates an individual or a group because of his race or in the case of institutions discrimination that subordinates any individual or his group because of his age, sex, race.

M: Dallas has policies and procedures then that are in effect racist, is that what you are saying?

NE: No, that's not what I said. I said institutional racism, and there's a difference between institutional racism and individual racism.

M: But policies are made by people and not by institutions?

NE: No, you see, individual racism as we define it is an overt act. These are observable phenomena that occur: violence, things that you watch on television. That's individual overt acts which represent bias, prejudice and racism. On the other hand, that's to be distinguished from institutional racism, which is more covert. It's more subtle; it's unconscious; it's unintentional, but nonetheless it has the same impact on the outcome. For many years in the state of Texas we had a state law that said Spanish could not be used as a medium of instruction, and many school districts interpreted that to mean that Spanish could not be spoken in school or on the school campus. Now I would submit to you that that's the rankest form of institutional discrimination or institutional racism. As a result of that, many of our Mexican-American students were short-changed, their futures have been sabotaged, and to answer the question what are we doing, well, we're spending over a million dollars on a bilingual program designed to help these young people who come into our schools where there is a language other than English used in the home.

M: The institutional racism, at least in the court case we're talking about right now, has apparently manifested itself in a high number of suspensions and expulsions, particularly falling on blacks and other minorities. Just how severe is that problem, and is it likely to continue?

NE: Well, number one, I ought to point out that the percentage of minorities suspended in Dallas is not any greater than in any of the other major school districts in the south.

M: Perhaps even in the nation.

NE: And in the nation. That's exactly right. For instance, I read in the paper this last week that Ft. Worth, our sister city, 81% of the suspensions were minority and they only have about 30% minority in the school district, so there's obvious problems there. If you read the percentages from Atlanta, from New Orleans, from Little Rock, from Detroit, Boston, there's obvious disproportionate numbers.

M: If we can generalize that in many cases repeated suspension does not work as a disciplinary tool, what alternatives are available to the school in the case of severe discipline problems?

NE: Now you're getting to the real crux of the matter. We need to take a new look at what discipline is and how discipline is learned, and based on that we need to determine whether suspension will really accomplish what we hope it will, or if corporal punishment accomplishes what we hope it will. Now the school needs a number of alternative programs and approaches. We need alternative programs within the school to help the student, we need alternative schools outside the school for the student, and that of course, is the direction in which we're moving. It seems to me that it's cheaper for our society to educate these children, than it is to put them out on the street so that they become tax eaters rather than tax payers or send them to a juvenile detention home where the cost is $5-10,000 a year for care.

M: The judge's finding is the first case in the nation in which the federal judge is found for the plaintiff. Do you expect this to happen other places in the country?

NE: Well, I would not be surprised if other school districts all over the country were not sued on the same basis, and if the other district courts follow Judge Hughes' ruling, then they will be facing the same problems that we're having.

M: Why did it take a court case for the pushout suspension-expulsion action to be taken?

NE: I don't think it took a court case. We have been working on this now for two or three years. With or without a court case we would have been developing and perfecting our affirmative action plan. I'm saying that even if we did not have a court order we would have been working on these things. In fact, we have been. This simply is another bit of evidence, indeed it's of assistance that we have this confirming our own beliefs and assisting us to move ahead.

M: Apparently not everyone was as aware of the institutional racism as Dr. Estes says he was. The Dallas Morning News immediately attacked Judge Hughes' decision and the superintendent's testimony. When I interviewed school board members Dr. Emmett Conrad and Mrs. Nancy Judy, I asked Mrs. Judy if she had been surprised by Dr. Estes' admission.

NJ: Yes, I was. I don't think that most of us are familiar with the term unless we are a member of a minority group. I would say that basically the reaction of the community, that is, the white community and also the teaching community in Dallas was one of bewilderment and outrage. They didn't understand what was meant.

M: Why did it take a court decision for you, for Dallas school systems, for the superintendent, for the board to become aware of institutional racism?

NJ: Well, it was the superintendent who volunteered the idea that institutional racism was responsible. In other words this was an admission on his part. This had not been discussed with the board prior to his testimony.

M: You are saying that the board was not at all aware of any kind of institutional racism before Dr. Estes mentioned it?

NJ: That's correct.

M: Dr. Conrad?

EC: I was not at all surprised. In fact, I couldn't understand why the great majority could not see it. After 100 years of separate but unequal education, the vestiges of a two-part school system remain. Any time over 16,000 students are excluded from our school system and 12,500 happen to be minorities, something is wrong. At the time our system was approximately 42% minority. This indicated to me that something was wrong. I think the whole thing stems back to the

attitude of the board regarding the court desegregation order. I think our general philosophy was "it shall not succeed." And one of the things that happens to the black child who would come to the majority area via bus, he would be met with the authoritative source of the principal stating, "you are in our school, you will act in this manner," with the total lack of sensitivity to cultural differences, to the fact that he was in a new surrounding, that he had to get accustomed to the lock step existence of many of the majority schools that did not exist in the minority schools. It would take some time.

M: Clearly the number of suspensions in Dallas and in many, many cities around the country plus the number of repeated suspensions indicate that suspension as a disciplinary tool is not working. What will the board recommend to the Dallas schools as a substitute disciplinary procedure?

NJ: We're asked our staff to come up with numerous suggestions that we can consider and some of course that will come about. Also in discussing this with administrators the emphasis will be there has to be a two way move, there has to be an attempt to counsel the student and give him the guidance he needs in order to work within the institution to extract the education that he deserves.

M: But the judge declared a finding of institutional racism, not student misbehavior. What are you going to do about the institutional racism that exists. I mean, how is the institution going to change?

NJ: The institution can, for example, work with the student in helping him adjust in the mainstream of society. For example, if habitual tardiness is causing a student ultimately to be suspended, you can't go on letting one student wander into a class 10 or 15 minutes late every day, but you can counsel him and perhaps his peers and groups that have the same problem, on the importance of time in our society and the importance of time in the working world.

M: Dr. Conrad?

EC: Well, I think we have to look at all of the things that I've entitled broadly institutional racism: Our textbooks, attitudes of our teachers, the attitude of our administration and our community attitude. I think it covers a broad spectrum of things, and we need to work out all of them. One thing I strongly encourage and that's the use of counseling services, because many of the problems we are excluding young people about, and many of the things that end up with young people getting corporal punishment are problems that are psychiatric problems, psychological problems and sometimes social problems and economic problems at home--which no amount of corporal punishment, no amount of exclusion will cure. This is one of the things we need to point out to the business community of America, that the dropout, the copout, usually end up in an institution where we have to care for them or we have to care for them in other manners or on welfare. So it's fiscally sound to give a young person a chance at making it in the system, rather than trying to correct the problem. I think remedial work is always much more expensive than preventive.

M: What is likely to happen in Dallas now? Dr. Estes, Attorney John Jordan and others share the fear that whites will continue to abandon the Dallas schools in the current year. Dallas was 39% minority in 1972-73. Last year the system was 49.4% minority, and this year white students are in the minority. At one point in our interview Dr. Estes asked plaintively, "How do I persuade white parents not to abandon the public schools?" Attorney Jordan asks the same question. Neither man has a clear answer. One experienced superintendent predicted that the Dallas white power structure would try to ignore the reality of the court decision. "They will bury their heads in the sand," he predicted, "and try to get the superintendent to retract his admission or at least to ignore it."

Dallas recently issued the affirmative action plan ordered by the court. The plan seems to follow the expert witness' suggestions fairly closely. The witnesses' own reaction to the plan: "I don't think this is a bad start given where the Dallas independent school district is now. My only question is, 'does the Dallas independent school district see this as a start or as the minimum they can get away with?" Attorney Jordan called the plan a "good start" but lamented the lack of student involvement. Among the specifics of the plan: immediate distribution of the book, The Student Pushout, to all principals and central staff. Dallas recently ordered 500 copies.

Hayes Mizell is a seasoned observer of school desegregation. Mr. Mizell is a member of the Richmond County, South Carolina, school board and director of the South Carolina Community Relations Program of the American Friends Service Committee. I asked Mr. Mizell for an explanation of the pushout phenomenon.

HM: Well, I think a lot of it, there are various reasons, and it's easy to be kind of glib and superficial about, but I think it's a little more complex perhaps than some folks would have you believe. I think really the primary reason is what I would refer to as cultural conflict, which simply means that you have a middle class school system with people teaching in it and administering it (both black and white) who are middle class people. They have in their school system students who are from a different cultural orientation and you have different orientations among the kids as to how you resolve conflict. Well, there are going to be some kids that come to school with the way you resolve conflict is that you beat them up, and the way you resolve conflict is to shout and holler at somebody and cuss them out.

M: Now do you think that suspension and expulsion are effective techniques for dealing with behavior problems in the schools?

HM: Well, I think it's very clear, at least to me, that short term suspensions have reached such a proportion that it's very clear that it just doesn't work; it's not an effective technique. Now our school officials say that suspension is not a punishment but rather a last ditch effort to get the parents to intervene in the behavior problem, which again is based on a certain set of middle class assumptions about the parents and their ability to become involved and their willingness and how they view education, and many other factors.

M: I think you are saying essentially that the schools are up against it, that it's very much a problem for them, and it's not so simple that you can just point your finger at the schools and blame them. Is that correct?

HM: Well, yes, I think there are a number of factors involved and certainly that the schools have to bear a major responsibility for failing to recognize that this disciplinary technique is not corrective but remains punitive.

M: Is institutional racism to blame?

HM: Well, it may be, as manifest through people's own racism that they can't recognize and deal with. I think that in many of these cases frankly that is no overt ill will and overt racism in terms of the guys standing there just waiting to get somebody who's black, I mean, it's really not that kind of situation in most cases. That's why I've put such an emphasis on the cultural conflict, because you have people who have come at conflicts and problems from two entirely different directions. For the white middle class teacher or even black middle class teacher who genuinely has a problem of how to teach in a classroom, if you have some kid she speaks to and the kid says, no he's not going to do that, and then proceeds to curse her out in front of the class, then obviously you've got a problem. I'm not sure that's racism in the sense that we generally understand it. I think that is real cultural conflict. But regardless of whatever it is, my concern is that we try to develop alternatives to really deal with it.

M: Developing alternatives in the schools is a local responsibility. At the Federal level the responsibilities are somewhat different. Various Civil Rights legislation prohibits discrimination, and the job for enforcing those laws falls to the Office for Civil Rights in the Department of Health, Education and Welfare and to the Civil Rights Division in the U.S. Department of Justice. The Office for Civil Rights, or OCR as it is often called, has 900 employees, over 300 of whom work in the Education Division. The Civil Rights Division of the Justice Department has 30 full time attorneys, 8 of whom are in the special unit to look at the enforcement problems of school systems that are under court order to desegregate. I asked Peter Holmes, Director of OCR, to describe the responsibilities of that office.

PH: Well, the Office for Civil Rights, which has been in existence since 1965, John, is charged with enforcing the non-discrimination requirements of Title VI of the 1964 Civil Rights Act. Those requirements simply say--the language is very brief and to the point--Title VI prohibits discrimination on the grounds of race, color, or national origin in programs or activities receiving federal financial assistance. Thus our responsibility is to insure that where recipients of federal funds from the Department of Health, Education and Welfare have programs, in effect that they are operated in a non-discriminatory manner. It's a very broad mandate.

M: What if the programs are not operated in a non-discriminatory manner?

PH: The procedures are essentially this: we undertake investigations either as a result of complaints or as a result of our own self-initiated investigations, on site reviews of recipients of federal funds. If we find discrimination, we notify the recipient, we ask them within a set time period to take corrective action to eliminate discrimination. If they fail to do that then we can take steps to initiate administrative enforcement proceedings, which grant the district a right to a hearing before an independent federal hearing examiner. All of which could ultimately lead to the withdrawal of federal financial assistance from the recipient.

M: Has that ever happened?

PH: Oh yes, in many, many cases. At one point in time over 200 school districts primarily in the south had their federal financial assistance terminated. There are a large number of districts right now in the administrative proceedings. At this point in time there is only one school district in the country that has its federal financial assistance terminated, and that's Ferndale, Michigan.

M: Why has the Office for Civil Rights come under such severe criticism from, for example, the Southern Regional Council and the Robert F. Kennedy Memorial. They wrote in their book The Student Pushout, "the overall record of the federal leadership shows an abdication of Congressional mandate to seek quality unitary education." Throughout this book there is severe criticism of the Office for Civil Rights generally. Why is that?

PH: John, it's difficult for me to tell. In this area of Civil Rights which is still emotional sometimes there's excessive verbage or rhetoric used in addressing the accomplishments or lack of accomplishments of the Office for Civil Rights. I feel much progress has been made in enforcing Title VI and much more progress will be made.

M: While I was talking to Mr. Holmes, Leon Hall of the Southern Regional Council in Atlanta was on the telephone. He responded to Holmes' defense by questioning whether OCR's annual survey of public school systems even asked the right questions.

LH: In the survey, the Office for Civil Rights previous to this last year never raised the question of the actual number or the incidence of suspensions in the school districts. The data that was actually sought from local school systems left no real solid foundation, a bare minimum foundation for the Office for Civil Rights to draw conclusions.

PH: Leon is quite right with regard to the discipline issue, suspensions and expulsions. It's been that only in the last two years that we began focusing in our annual school survey which is a form we send out to school districts asking for racial data. But to put the matter in perspective, let me go back and try to focus on the priorities of Civil Rights enforcement. What I'm trying to do when I say put this in perspective is, the first priority back in the mid 60's was eliminating the student desegregation between schools. That continued into the early 70's and then we attempted to focus (and I regret that it wasn't a focus before) on the problem of faculty dismissals,

discriminatory firings and dismissals. Now we've continued on that effort as well as adding the focus on in-school or second generation type of desegregation problems, classroom desegregation. Now we are adding to that effort the issue of discipline, as we should be. It is regrettable in hindsight that those couldn't have all been priorities since passage of the 1964 Civil Rights Act. But the fact of the matter is that they weren't priorities at the same time.

M: Later on in our interview, Holmes spoke more candidly about OCR's priorities.

PH: Now what I was trying to do in laying out the perspective of the thing is that we've made progress in the physical desegregation between schools. We have had the time and the staff and the energies to focus on the problems of teachers. As we've been able to focus on that we've had the time, the staff and the energy to focus on second generation problems. The director of my secondary and elementary education division he believes that while discipline is an important matter, we should not devote substantial parts of our energy to that problem, because he feels as a matter of priority that a more important thing to do is to worry about kids in the 1st, 2nd, 3rd, 4th, 5th, and 6th grades who are being discriminatorily assigned to ability groupings who are experiencing frustration that by the time they get to the 10th grade, they're going to punch the first white kid they see in the face and get kicked out of school. And if you can eliminate that frustration in the formative years of the kids as a matter of priority, and it's sort of a cruel hard fact. We're not going to say that we're not going to do anything else but discipline them. No, we're going to try to develop a program in discipline. It's getting national focus. It is a problem that we feel may be somewhat severe. I don't think it's as severe quite frankly as some people may, as Leon may, but I think it's a problem, again talking about degrees. But again I think that our focus over the last several years on the assignment of students to classes in elementary schools, as well as junior and senior high schools, is going to result in the long run in a lessening of this disproportion.

M: I asked Holmes to explain how pushouts became an official concern.

PH: First of all, I think that the Southern Regional Council's report has been extremely beneficial in focussing public attention on the problem. It got a lot of publicity, as it should have, and I think national publicity. Then the issuance of that report was followed by the holding of Congressional hearings by the Equal Opportunity Subcommittee in the House of Representatives, which again focussed national attention on it. We have begun, as I have testified before the Congress, to do a number of pilot investigations around the country into the problems of discipline, and I might note too that we've just begun the on-site review in August in Ann Arundel County, Maryland. That is the first of our pilot reviews, and there'll be a number more that will be undertaken in the course of this fiscal year. Our hope is from that effort to gain a greater awareness of the problems and to attempt to develop a national policy that will ensure non discrimination in the meting out of disciplinary sanctions.

M: Mr. Hall, what increased efforts would you bring about to end or deal with the problem of pushouts?

LH: I would certainly pursue several of the things Peter has pointed out that the Office for Civil Rights is in the process of doing now, which I think are extremely effective based upon some responses we have seen in the Southern region since the House Subcommittee hearings. I would also strongly consider seeking punitive action against some school administrators, some teachers, some school boards, who have shown a long history in many cases of recalcitrance toward desegregation generally and toward Civil Rights overall. I would certainly consider dragging some of these individuals into court to get some strong court orders against the individuals. I'm saying from the outset some effort must be made to sensitize these teachers of what they're going. I suspect from having encountered a fair number of those type teachers and educators, that these are the same type teachers who are holding to the belief that they will never succumb to the court order, that they will never see integration proceed smoothly. Since often times these teachers are quite obvious upon encountering them. I think that some efforts should be made to sensitize these teachers and get them to change. Often it is the case that these teachers and administrators know what they're doing, are very conscious of it and have decided that they will get rid of minority students and minority educators where ever they can.

M: Mr. Holmes, you've heard Mr. Hall suggest that the pushout problem, that the Office for Civil Rights could do a better job if it took some teachers and administrators into court. Could the Office for Civil Rights do that?

PH: No, under our legislative jurisdiction we can't take people into court. The Department of Justice can.

M: I asked Brian Landsberg formerly the Chief Education Prosecutor in the Civil Rights Division in the Justice Department, to explain the relationship between his office and the Office for Civil Rights.

BL: We could receive a complaint from a parent, and HEW could receive a complaint from the parent. We would both have a responsibility to look into it, and in a case like that we would try to work something out with them so that we don't overlap, we don't duplicate effort.

M: Do you ever bring suit at the request of the Office for Civil Rights in HEW?

BL: Yes, we have filed a large number of lawsuits at the request of HEW. I don't know the precise number. I would guess that we have sued in the neighborhood of 40 or 50 school districts at the request of HEW. I don't believe any of these lawsuits were so-called "pushout" lawsuits.

M: How many pushout cases is the Justice Department involved in now?

BL: We have several under active investigation. We do not have any pending motions relating to pushouts.

M: Suppose someone listening to this program right now recognizes himself or herself as a pushout. What do you as a Justice Department lawyer suggest?

BL: Well, I would say that somebody in that situation should tell..., the easiest thing for them to do would be to tell the closest Office for Civil Rights at HEW. At the same time they could write a letter to the Attorney General, a very simple letter saying: "Dear Mr. Attorney General, My name is Johnny Jones and my address is so-and-so and I feel that I have been discriminatorily expelled from school" and name the school system. Now the Attorney General's authority to do something about that might depend on if there were an existing court order against that school system. I think that it does not hurt to tell both HEW and the Justice Department, to ensure that the proper agency that has jurisdiction over that particular school system will take some action.

M: Do you get many such letters?

BL: I don"t have the statistics; we get some. I think that the total number in any given year of letters relating to pushouts would number maybe 20-25 at most but I don't have the statistics.

M: Do you think pushouts are a major educational problem?

BL: Well, I think that when school age children are out of school, for whatever reason, whether they've been pushed out by the school authorities or by any other circumstances, it is a serious problem. It's a failure on the part of the educational institutions.

M: Let's assume that Johnny Jones does write the Office for Civil Rights and the Attorney General. What's the history of attempts to prove "pushout"? Are statistics enough? Leon Hall sees it this way.

LH: It's like a roller coaster. Through some periods we got the response that statistical evidence on its face does not hold enough weight to go in court, though OCR cannot go into court. In other instances we gather from OCR that they know discrimination is taking place and it's a difficult task to tie down the actual case. Regarding the statistics over all, we were informed that you must bring statistical evidence. We could go, and I can never forget, we would offer presentations before federal representatives; we would point to a particular case; we were told that this kind of data doesn't hold water in court. "You can't go to court with that." I think some systematical approach is necessary. I am seeking to urge the Department of Justice to make cases such as the Dallas case, or to pick up where the Dallas case left off and carry it to the next step. Until we have this happening, until we see that type of vigilance in OCR, I think we will be putting out brush fires throughout the coming year.

M: A statistical proportion was not enough for OCR, according to Holmes.

PH: The gist of this discussion concerns me somewhat. It is significant. I am simply saying that in and of itself it does not prove discrimination, and we feel, I'm advised constantly by my attorneys in the Department of Health, Education and Welfare that we will <u>not</u> win a hearing on the basis of mere statistics alone, that we must have more proof, more evidence than mere statistics alone.

M: Landsberg of the Justice Department agrees.

BL: Very early, as long ago as 1970 we tried our hand at getting relief for student pushout problems, and we found that it is very difficult to win that kind of lawsuit. The lawsuits we tried at that time we lost. What we need is to prove that the pushout phenomenon is the result of racial discrimination by the school authorities.

M: Now, let me pose a hypothetical situation. Suppose the student body of a school is 25% minority students and the suspension rates are 80% minority students. Is that on its face racial discrimination?

BL: Well, I think that's a question that the courts have not yet decided. I would say that where it's been presented so far, the courts have required something more than that. How much more one would have to prove, I think, is still up in the air. Some lawyers have suggested that there might be a distinction between cases where the school system has been operating under a desegregation order and cases where it was not. That if a school system had to be sued to be desegregated. and then thereafter there were disproportionate expulsions of black students, that should be proof of racial discrimination, but so far I don't know of any court that has bought that argument. In every case where there has been relief granted that I know of there has been proof over and above the statistics. The question is whether the statistics are a result of some discriminatory conduct on the part of the school authorities or whether they're the result of the way the students act.

M: The importance of the statistics resides in the legal concept of the "burden of proof," meaning who has to prove the case. Where there is a disproportionate suspension rate for minorities, should the alleged pushout have to prove discrimination, or should the school district have to prove that it has <u>not</u> discriminated? I asked Lenny Conway of the Robert F. Kennedy Memorial to explain the position taken in the RFK/SRC book.

LC: What we're talking about is, where there has been a history of past racial discrimination and that takes in a majority of the South that has been under the different federal civil rights acts as well as the desegregation orders. Where the plaintiff can establish statistically large disproportionate numbers of suspensions, so if you have for example a school district that has 30% black but 60% of the suspensions in that district. Our position and the position of Southern Regional Council in our book on pushouts is that these statistics should be enough, given the past history of racial discrimination, to shift the burden of proof of discrimination from an affirmative burden on the plaintiff to a burden on the defendant school district.

M: Do you expect the court to accept that position?

LC: Well, we feel that in the past this argument has not been raised. It has been raised most recently in a case in Dallas, and the decision that has come down has been fairly unclear as to exactly whether the judge has accepted it or not accepted it. But we feel it is a very viable argument. We feel there is no reason why an argument such as this which has been applied to teachers and in labor situations in general cannot be applied as well to the student pushout.

M: Now I understand that in Dallas, the reason that it's unresolved is that in fact the defendants accepted the contention of the plaintiff that there had been discrimination, and therefore the judge was not forced to resolve it.

LC: Exactly, we feel that the Dallas case presented a very strong possibility for the acceptance of this principle, and I think that the school officials must have agreed with us on that and with Dallas legal services, since they have accepted a negotiated settlement on the case.

M: So let me make sure I understand this completely now. The burden of proof argument falls normally on the plaintiff, on the people who are bringing the case, and what you are saying, what your book is arguing is that in instances where there's a history of discrimination and in which the statistics are disproportionate (that is, minority enrollment of 30% and suspension figure of 60%), you are arguing that the burden of proof should be shifted, so that the defendant should have to prove in court that they are not discriminating. In other words, they are guilty until proven innocent?

LC: Well, not necessarily guilty until proven innocent, but that the defendant's actions on the basis of statistics should be enough to establish that they must prove that they have not been discriminating against students. This is clearly what's been established. The burden of proof of discrimination of motive, of calculated planning, is an extremely harsh one, and to put that on plaintiffs. on individual students or in a class action suit involving students, is almost an impossible burden. It's been the primary reason HEW has maintained they cannot establish discriminatory suspension policies. We feel it's a major stumbling block which the courts have removed in other types of suits. We see no reason why that shifting of burden of proof should not take place in a case dealing with students.

M: So that's pushouts, a new category of classroom exiles. It is not an exclusively southern problem. In fact, black and other minority kids are being pushed out of schools across the country as the statistics from Dallas, Pittsburgh, Indianapolis, Boston, and Dade County, Florida indicate.

Several concluding notes are in order: the suspension and expulsion statistics only reflect the pushout problem, they are not an exact mirror image. Many school systems have substituted indefinite suspension for expulsion, so that the expulsion statistics are not particularly meaningful. The Office for Civil Rights reports that no students were expelled from public schools last year in New York City, Chicago, Houston, New Orleans, St. Louis, and Washington, D.C. But suspension remains a popular disciplinary tool, although there are serious questions about its effectiveness. Suspension is used most often on, or against, minority students, north, south, east, and west. To the Office for Civil Rights and the Justice Department a disproportionate number of suspension of minority students, as in Dallas, New York, Pittsburgh, Mobile, Boston, and Dade County, Florida, are "red flags," signals that something may be wrong. Whether those two federal agencies responded properly to the "red flags" is open to serious question. In the Adams vs. Richardson case a U.S. District Court ruled in 1972 that HEW, that is, the Office for Civil Rights, had "massively defaulted" in the enforcement of Title VI of the Civil Rights Act. The Court

of Appeals affirmed the decision, which means that HEW has not been enforcing the law of the land.

You have heard Peter Holmes of OCR explain the priorities of his office. You have been told that the Justice Department has no pushout cases in court now. You did not hear, as I did, the Justice Department Official recently promoted to Chief Prosecutor in the Civil Rights Division, joke about pushouts. "Pushouts," he said, "I thought that was some kind of exercise." The joke isn't funny. Too many young lives are literally at stake. The young person who leaves school for whatever reason is more likely to become a social burden, in jail, on welfare, or unemployed. The costs in lost income of nongraduation from high school can be measured in dollars, of course. Typically, a male high school graduate will earn $113,000 more than a nongraduate during the working years from 18 to 65. That means the total national costs of non-completion of high school amount to billions of dollars annually.

Additional costs are beyond measurement: the level of learning associated with a high school education and a diminished awareness of one's human dignity.

A Congressional subcommittee recently drafted legislation which was subsequently approved by both House and Senate. The legislation, called "The Juvenile Justice and Delinquency Prevention Act of 1974", contains a provision about pushouts. The provisions calls for providing resources, meaning money, to help prevent unwarranted and arbitrary suspensions and expulsions. "This is only a first small step," a subcommittee spokesman said, "but it brings the problem more clearly into view." It seems doubtful that new Federal legislation will help. It would be enough to enforce the existing laws.

Many times on this program the Robert F. Kennedy Memorial Southern Regional Council Book, The Student Pushout, has been mentioned. You may get a copy for $1 from either The Robert F. Kennedy Memorial, 1035 30th Street, N.W., Washington, D.C. 20007, or the Southern Regional Council, 52 Fairley Street, N.W., Atlanta, Georgia 30303. Let Leon Hall explain why the book was written.

LH "The prime reason for the Southern Regional Conference and the Robert F. Kennedy Memorial coming up with this was that there were across the land, private agencies, community groups, young people, screaming and bemoaning the fact that young people, black students were being driven out of the schools because of color. We found that we have sought to get the bodies mixed, geting black and white children in the same physical setting. In many instances this was under great strain and was under great force before school people would mix the bodies. These same school people have now agreed to mix them for a second. It is like a conveyor belt--they come in and they keep on going--keep minority kids going right back out."

(Music)

M For "Options on Education," I'm John Merrow. This program was produced by Midge Hart and John Merrow. If you want a transcript or information about future programs, write to "Options on Education, 1001 Connecticut Avenue, N.W., Room 310, Washington, D.C. 20036.

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